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March 20, 1998

By Hand Delivery

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
Mail Stop Code 1170  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

Re: Ex Parte Notice -- CC Docket No. 96-45  
Federal-State Joint Board on Universal Service

On March 19, 1998, Cindy Durst, Dave Flinkstrom and John Wolf, all of the National Railroad Passenger Corporation (Amtrak), and I met with: Lisa Gelb, Lisa Boehly and Cheryl Leanza, all of the Universal Service Branch, Accounting and Audits Division, Common Carrier Bureau; Ruth Milkman and Valerie Yates, both of the Common Carrier Bureau; Kevin Martin, Legal Advisor to Commissioner Harold Furchtgott-Roth; Paul Gallant, Legal Advisor to Commissioner Gloria Tristani; James Casserly, Legal Advisor to Commissioner Susan Ness; Kyle Dixon, Legal Advisor to Commissioner Michael Powell; and Tom Power, Legal Advisor to Chairman William Kennard, to discuss issues summarized in the attached material.

One focus of the discussions in the above meetings that deserves additional clarification was Amtrak's status as a reseller, as opposed to a facilities based carrier. In creating a "system integrator" exception in the Fourth Reconsideration Order in the above-captioned proceeding, the Commission stated that this exception would be applied to resellers and not facilities-based carriers. Amtrak is indeed a reseller of telecommunications services, and not a facilities-based carrier. Amtrak does not own the relevant communications network existing on its right-of-way. These networks were built and are owned and maintained by entities (facilities-based carriers) to which Amtrak leases its right of way for this telecommunications purpose; these entities provide communications capacity on their networks to Amtrak, in exchange for the lease of right-of-way.

Given that these entities merely provide communications capacity to Amtrak, which then resells a small portion of this capacity to customers, Amtrak cannot be said to be a facilities-based carrier, or as having leased unbundled network

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Ms. Magalie Roman Salas

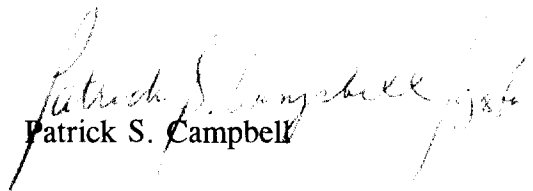
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elements. In any event, given the totality of Amtrak's arguments in favor of an exemption from the universal service obligation, as set forth on the attached material, Amtrak believes that, regardless of whether it is a reseller, it is still sufficiently similar to system integrators to warrant application of the "system integrator" analysis used in the Fourth Reconsideration Order, as additional justification for granting an exemption to Amtrak.

Another topic discussed in the meetings that deserves further mention was the fact that granting an exemption to Amtrak would not have any anticompetitive effects. Amtrak sells most its excess capacity to common carriers on a private carrier basis, and does not compete significantly with common carriers. In fact, the amount of capacity resold by Amtrak is so small that, even after adding all of the unsold capacity physically available to Amtrak for resale, revenues from the sale of communications capacity are still expected to be significantly less than one percent of Amtrak's total revenues. Given this lack of market share or impact, coupled with the fact that Amtrak's private-carrier service offerings are so unique and customer-specific that they are not competitive with those of common carriers (who are in fact Amtrak's largest customers), exempting Amtrak from the universal service fund contribution requirement would not affect competition or give Amtrak any advantage over common carriers.

We are submitting two copies of this notice in accordance with the Commission's rules. Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions.

Sincerely,

  
Patrick S. Campbell

Attachment

cc: Lisa Gelb  
Lisa Boehly  
Cheryl Leanza  
Ruth Milkman  
Valerie Yates  
Kevin Martin  
Paul Gallant  
James Casserly  
Kyle Dixon  
Tom Power

**National Railroad Passenger Corporation (AMTRAK)**  
**Amtrak's Universal Service Fund Obligation**

**I. Background on Amtrak**

- Passenger railroad company operating under federal statute and operating support.
- Has been directed to take action to eliminate need for federal operating support by the year 2002, including the most cost-effective use of its facilities and property.
- Uses a fiber optic communications network constructed and owned by other entities primarily for its train signaling and other railroad operations -- sells excess capacity on a private carrier basis.
- Sale of excess capacity is part of effort to meet Congressional demands for the elimination of the need for federal operating support.

**II. Amtrak Should be Exempt from The USF Contribution Requirement.**

- As with requiring contributions from non-profit schools, health care providers and other entities eligible to receive USF support, requiring Amtrak to make USF contributions would be "counterproductive" to Congressional mandates, given the command that Amtrak eliminate the need for federal operating support by 2002.
- De minimis exception for "system integrators" created in the Fourth Recon. Order should be applied to Amtrak:
  - Amtrak's "provision of telecommunications is incidental to [its] core business." Such services are clearly incidental to Amtrak's core passenger railroad business.
  - Amtrak "obtains a de minimis amount of [its] revenues from the resale of telecommunications." End user telecommunications revenues for 1996 were less than one percent of the Company's total revenues.
  - Amtrak "do[es] not significantly compete with common carriers." Amtrak's largest customers are common carriers.
  - Commission may not discriminate between similar entities, and must therefore extend the "system integrators" exception to Amtrak.
- Amtrak's authorizing statute forbids the imposition of a "tax or fee" on the acquisition or operation of property or facilities used directly or indirectly by Amtrak in providing rail passenger service; communications network is used primarily in providing passenger service, and sale of excess capacity is merely incidental to such use; statute should therefore be read as prohibiting requirement that Amtrak make USF contributions.